

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR
BENCH, JAIPUR

ORDER

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S.B. Civil First Appeal No. 12/1989

Smt. Rameshwari

Versus

Smt. Saroj Devi

∴

Date of order ∴ August 31, 2007

PRESENT

HON'BLE DR. JUSTICE VINEET KOTHARI

D.K. Dixit for the appellant
Mr. L.L. Jain for the respondent

BY THE COURT:

1. This appeal of the defendant is directed against the judgment and decree in Civil Suit No. 71/1985, whereby the learned trial court decreed the money suit filed by the plaintiff for Rs. 41,240/- by the judgment and decree dated 30.07.1988.
2. The case of the plaintiff before the trial court in the plaint

was that for the business needs of the defendant, the plaintiff advanced a sum of Rs. 23,000/- by cash on 18.03.1980 and Rs. 9000/- by cheque of Punjab National Bank dated 19.03.1980 and against the said cash advance, the defendant Smt. Rameshwari executed 16 Hundis of Rs.2000/- each for payment of the said negotiable instruments (Hundis) with interest at the rate of 1% per month. Since the defendant failed to pay the said money on due date; hence, this suit, including demand of interest, of Rs. 41,240/- was filed by the plaintiff under Order 37 CPC.

3. In the written statement filed by the defendant, the defendant denied having taken any advance from the plaintiff and the defendant submitted that the husband of the plaintiff Ramesh Chandra Jalan had agreed to repair and renovate the cinema hall owned by the defendant M/s. Royal Talkies in Beawar and under the said agreement, had agreed to deposit a sum of Rs. 25,000/- as security deposit with the defendant and under the bonafide impression and being in good terms

with the plaintiff's family, the defendant signed the aforesaid hundis.

4. The learned trial court after framing issues and recording evidence of witnesses, viz. P.W. 1 Saroj Jalan, P.W.2 Ramesh Chandra Jalan and P.W.3 Kanwar Lal on plaintiff side and D.W.1 Rameshwari Devi and D.W.2 Praveen Kumar on defence side and documentary evidences in the form of hundis, on appreciation of the said evidences found that the said cash advance of Rs. 32,000/- was given by the plaintiff to the defendant by cash and cheque and the said 16 hundis were duly executed by the defendant in support of the said cash advance taken by her. The trial court relied upon Section 118 of the Negotiable Instruments Act, which raises a presumption of consideration when such a negotiable instrument is executed.

5. Relying on the judgment of this in *M/s. Jankilal Shrinarayan Vs. Hanuman* reported in (1979) RLW 470 and *Lal*

Chand Vs. Satish Chandra reported in (1982) WLN 54, the learned counsel for the plaintiff–respondent Mr. L.L. Jain urged that the plaintiff had fully proved its case before the learned trial court and the said hundis were duly executed by the defendant in favour of the plaintiff in support of the cash loan taken from the plaintiff and in view of the legal presumption under Section 118 of the Negotiable Instruments Act, the defendants were liable to pay the said money with interest as stipulated in the hundis and therefore, the learned trial court was fully justified in decreeing the suit. He further submitted that since the defendant Rameshwari had herself admitted her signatures on the said hundis, therefore, there is no question of saying that there was no consideration against the said execution of the hundis.

6. Learned counsel for the appellant–defendant submitted that the learned trial court had erred in decreeing the suit as no consideration passed on between the parties for execution of the said hundis.

7. I have heard learned counsel, perused the pleadings and record of the trial court.

8. This court finds that the said hundis Ex.1 to 16 are duly executed negotiable instruments on stamp of Rs. 2/- and the signatures on the same are duly admitted not only in the written statement but also in the statements of D.W.1 Rameshwari herself. Section 118 of the Negotiable Instruments Act clearly raises a presumption in favour of the plaintiff in this regard as to passing on of consideration between the parties. The defence taken by the defendant that the said advance was under a purported agreement to renovate and repair the cinema hall of defendant, has not been proved by the defendant. The scribe of these hundis, namely P.W.3 Kanwar Lal, has also proved the execution of the said hundis in favour of the plaintiff. In view of the aforesaid legal position and overwhelming evidence on record, this court finds no force in the appeal of the defendant and the trial court was justified in deciding various issues in favour of the plaintiff and decreeing the suit.

9. Consequently, this appeal is devoid of any merit and the same is dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 11